STATE OF MICHIGAN

COURT OF APPEALS

ROBERT S. SEYCO and DANEEN M. SEYCO, Plaintiffs-Appellants,	UNPUBLISHED May 12, 2005
v	No. 252296 St. Clair Circuit Court
CHARLES L. RENNY II and KAREN N. RENNY, Defendants-Appellees.	LC No. 02-001229-CK

Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiffs, who purchased a home from defendants, claimed that defendants breached the contract by misrepresenting in a seller's disclosure statement that the home was not infested.[1] Concluding that there was no evidence of actual knowledge, intentional misrepresentation, reliance, or infestation of an area that was readily accessible and apparent, the trial court ruled that plaintiffs were not entitled to relief. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In *Bergen v Baker*, 264 Mich App 376; 383-385; 691 NW2d 770 (2004), this Court addressed the Michigan Seller Disclosure Act (SDA), MCL 565.951 *et seq.*, noting:

> Of particular importance is the act's provision touching on liability arising from errors, inaccuracies, or omissions in the disclosure statement. MCL 565.955(1) provides:
>
> The transferor or his or her agent is not liable for any error, inaccuracy, or omission in any information delivered pursuant to this act if the error, inaccuracy, or omission was not within the personal knowledge of the transferor, . . . and ordinary care was exercised in transmitting the information. It is not a violation

[1] Each of plaintiffs' causes of action relates to and relies on representations in the seller's disclosure statement.

> of this act if the transferor fails to disclose information that could be obtained only through inspection or observation of inaccessible portions of real estate or could be discovered only by a person with expertise in a science or trade beyond the knowledge of the transferor. [Footnote omitted].
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> Reviewing collectively the language of the relevant statutes that comprise the SDA, it is evident that the Legislature intended to allow for seller liability in a civil action alleging fraud or violation of the act brought by a purchaser on the basis of misrepresentations or omissions in a disclosure statement, but with some limitations. Liability is precluded for errors, inaccuracies, or omissions in a seller disclosure statement that existed when the statement was delivered, where the seller lacked personal knowledge, and would not have had personal knowledge by the exercise of ordinary care, [n4] of any error, inaccuracy, or omission and thus proceeds in good faith to deliver the disclosure statement to the buyer. [Citations omitted.]
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> [n4] We emphasize that, consistent with MCL 565.955(1), the seller has not violated the act where undisclosed and unknown information could be obtained only through inspection or observation of inaccessible areas of the home or could only be discovered by a person with expertise beyond the knowledge of the seller.

Summary disposition under MCR 2.116(C)(10) may be granted when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." We review de novo the trial court's ruling on a motion for summary disposition. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). This Court is liberal in finding a genuine issue of material fact, *Marlo Beauty Supply, Inc v Farmers Ins Group of Cos*, 227 Mich App 309, 320; 575 NW2d 324 (1998), which exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). Questions concerning knowledge can be proven by circumstantial evidence. *Bergen, supra* at 387.

Although presented with a close question given the circumstantial evidence of substantial mice droppings and damage to interior boards caused by mice feces and urine, we conclude that summary disposition was appropriate. The parties agreed that there was no evidence of mice droppings outside of the walls. Moreover, the home was unoccupied during the 2000-2001 winter, and there was no evidence reflecting that the infestation of mice did not occur during that time. Given this, and the fact that the only discernable evidence of infestation was in an inaccessible place and that mice were heard on only one occasion, which was after the sale, reasonable minds could not differ as to whether defendants had personal knowledge or should have had knowledge of infestation at the time they signed the disclosure statement. MCL 565.955(1) precludes liability where undisclosed and unknown information could be obtained

only through inspection or observation of inaccessible areas of the home, and thus plaintiffs cannot be held liable where there was a lack of evidence showing knowledge of infestation, along with a lack of evidence showing that infestation was detectable through inspection and observation of accessible areas of the home.[2]

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Michael R. Smolenski

[2] We note that there was a dearth of evidence indicating that the odor, which allegedly permeated the home, was apparent or noticeable before or at the time of closing.